

Under Illinois law, lessors under true lease agreements are deemed the users of items they purchase for rental purposes. Accordingly, lessors incur a Use Tax liability on such purchases. See 86 Ill. Adm. Code 130.2010. (This is a GIL.)

March 25, 1999

Dear Xxxxx:

This letter is in response to your letter that we received on March 17, 1999. Your letter to the Director of Revenue has been referred to me for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I would greatly appreciate your help in determining the tax ramifications of the following set of facts.

Our company is leasing equipment. These are short-term leases in which there are contracts with COMPANY that state that the lessee pays all sales taxes. At the end of the lease, the leases will terminate and the equipment will be returned to COMPANY.

We are aware that lessors of rental equipment are obligated to pay sales tax on the equipment they are leasing when they first purchase such equipment. The statutes that support this is Section 130.2010, Section 130.220, Section 150.305, and Section 150.306. By virtue of these statutes, the lessee does not pay sales tax on the lease of such equipment when there is no purchase option at the end of the contract. The equipment we are leasing is not purchased by COMPANY but is manufactured by them. However, we will not be purchasing the equipment from them and feel that we are not liable for any taxes on the lease.

Are there any provisions that allow the lessor to either pass their tax along to the lessee on a monthly basis based on the amount of the lease or create a tax when the lease follows the criteria stated above?

If you could direct someone in your office to consider our situation and return a written reply to my question in addition to sending citation of the statutes to support your position, I would greatly appreciate your efforts.

I would like something in writing that we may send a copy of such to COMPANY so that they would also understand the taxation of such circumstances. If we are taxable in such situation, we will pay the tax to COMPANY with their monthly invoices. However, if we are not liable for such tax, it is our intention that we make it clear that the State of Illinois has made such determination.

Thank you for your kind consideration.

For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors are subjected to a Use Tax on their cost price or acquisition value of tangible personal property which they use by leasing in Illinois. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See, 86 Ill. Adm. Code 130.220(a). As end users of tangible personal property located in Illinois, lessors incur Use Tax liability on their cost price of such property. Lessors who manufacture the tangible personal property that they lease incur a Use Tax liability on their cost price of materials and other components they purchase for the purpose of manufacturing the rental equipment. Please refer to 86 Ill. Adm. Code 150.305(b), enclosed.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales subject to Retailers' Occupation Tax. Such would be the case when the agreements contain nominal purchase options at the end of the lease term. In these situations Retailers' Occupation Tax is due on all the payments received by the "lessors." Interest or finance charges may be excluded from gross receipts if the books of the retailers ("lessors") clearly reflect the amounts of the payments attributable to financing. See 86 Ill. Adm. Code 130.420, enclosed.

Under Illinois law, lessors may not "pass through" their Use Tax obligation to lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl Betz  
Associate Counsel

KB:msk  
Enc.